

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 394 of 1998

in

SPECIAL CRIMINAL APPLICATION No 1488 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

TARLIKABEN RAMAKANT PARMAR

Versus

MANAGER INDIAN BANK

Appearance:

MRS MADHUBEN SHARMA for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/02/98

ORAL JUDGEMENT (Per Patel, J.)

The applicant has prayed for a direction to the respondent Bank "to pay the entire amount of fixed

deposit with accrued interest", without annexing copies of the earlier orders passed by the Court and without narrating the relevant facts in the application.

2. In paragraph 4 of the application, the applicant has requested the Court that the Court may issue necessary directions to the Bank for payment of the aforesaid amount which is lying with the Bank in a Fixed Deposit in the name of the present applicant. The applicant has stated in the application that she has attained the age of majority, and, therefore, she is entitled to get the amount. For the purpose of pointing out to the Court that she has attained the age of majority, a xerox copy of School Leaving Certificate issued by Akshay High School is annexed wherein the date of birth of the applicant is shown as 16.7.1977.

3. We put pointed question repeatedly to the learned Advocate as to in the facts and circumstances of the case, when the applicant will attain the age of majority, and the learned advocate stated that in view of the aforesaid certificate, the applicant has already attained the age of majority. The submission is that as she has now attained the age of 20 years, there should be no reason for not releasing the said amount.

4. We are sorry to state that the learned advocate has not annexed with the application copy of the order passed by the Division Bench earlier in Special Criminal Application No. 1488 of 1993. In that case, the Division Bench, after considering the facts, law and earlier orders passed by the Court, in the concluding paragraph, has directed as under:

"In view of these facts, we are of the opinion that the petitioner should be entrusted with the custody of the minor Tarlika and appointed as the guardian of the person of Tarlika. We, therefore, direct that the custody of minor Tarlika to remain with the petitioner. We also make it clear that petitioner shall not be entitled to claim past, present or future maintenance of Tarlika. We also direct the Indian Bank, Piplag Branch not to pay the amount of Rs.28,000/- with accrued interest lying with them in fixed deposit in the name of minor Tarlika without the orders of this Court. The petition is accordingly allowed. Rule made absolute."

Thus, it is clear that the petitioner of Special

Criminal Application No.1488/93 [Sushilaben Dahyabhai Parmar] was appointed as a guardian by the Court.

5. Section 3 of the Indian Majority Act is a relevant section which is required to be considered in the instant case, which reads as under:-

3. "Subject as aforesaid every minor of whose person or property or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age, shall, notwithstanding anything contained in the Indian Succession Act No. X of 1865 or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty one years and not before."

6. Thus, it is clear that in the instant case, the Court has declared the petitioner of Special Criminal Application No.1488/93 [Sushilaben Dahyabhai Parmar] as a guardian, before the present applicant [Tarlika] attained the age of 18 years. In view of the order passed by the Court and the aforesaid provision of law, notwithstanding anything contained in the Indian Succession Act or in any other enactment, the applicant shall be deemed to have attained majority when the applicant completes age of twenty one years.

7. In the present application, the applicant ought to have mentioned the fact that Sushilaben Dahyabhai Parmar was appointed as a guardian by an order of this Court in the aforesaid Special Criminal Application before she attained the age of 18 years. We are of the opinion that suppression of this declaration is only with a view to mislead the Court, and these proceedings are nothing but an abuse of the process of law.

8. In the light of the aforesaid position, the applicant cannot say at this stage that the applicant has attained the age of majority, and, therefore, she is not entitled to get the amount of the Fixed Deposit with accrued interest.

This application stands rejected.

csm. / -----